IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 980 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 22/03/2005 in WP NO : 3860 OF 2005 on the file of the High Court.)

Between:

Sankaramanchi Poornachandra Sastry, S/o.Sita Ramaiah,
R/o.Kothapet, Ongole, Prkasam District.

..... APPELLANT

AND

1 Sankamachi Anil Kumar, S/o.Sita Ramaiah,
R/o.Kesava Swampet, Ongole, Prakasam District.
2 Sri Kasi Viswaswara Swamy Temple, Ongole, rep. by its

Executive officer,
3 The Regional Joint Commissioner, Muti-zone-II, Endowment

Department, O/o.Hathiramji Hutt,
Tirupathi, Chittoor District.

.....RESPONDENTS

Counsel for the Appellant: MR.T.RAJENDRA PRASAD

Counsel for the Respondent No.1: MR.D.SURESH KUMAR

Counsel for the Respondent No.2: Smt. N. INDRANI.

Counsel for the Respondent No.3:……..

The Court made the following :

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JUDGMENT:(Per Hon'ble Smt. Justice T. Meena Kumari)

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This writ appeal is filed by the appellant aggrieved by the order, dated 22.03.2005 in WP No.3860 of 2005, under which the learned Single Judge allowed the writ petition giving liberty to the respondents 1 and 2 to notify and fill up the posts of 'Archakas' in accordance with the service conditions of the 'Archakas' governed by the Rules, 2001.

The appellant herein is the 3rd respondent and the 1st respondent herein is the writ petitioner in the writ petition. Originally, the writ petition was filed seeking a direction, in the nature of writ of Mandamus, declaring the action of the respondents 1 and 2 in appointing the 3rd respondent as Archaka vide Rc.No.32/2004, dated 25.2.2005 as illegal and void and also to declare the action of the respondents 1 and 2 in not considering the application of the petitioner for being appointed as Archaka in the 1st respondent-temple, as illegal and arbitrary.

It is the case of the writ petitioner that as per Rule 7 of Archakas and other Office-Holders and Servants Qualifications and Emoluments Rules, 2001, with regard to the age, for the post of Archaka, the person must have completed the age of thirty years and must not have completed thirty eight years for direct recruitment. As per the above rules, the appointment of 3rd respondent, who is barred by age, is illegal. Per contra, the 1st respondent filed a counter contending that the appointment of the 3rd respondent was made as per the agreement and no rules have come into picture.

The learned Single Judge having observed that the appointment of the 3rd respondent is contrary to the Rule 7 of the Rules, 2001, allowed the writ petition. Aggrieved by the same, the 3rd respondent preferred this appeal.

The learned Counsel for the appellant-3rd respondent contends that the father of the appellant was the Archaka of the temple and Ac.14.88 were allotted to the family for rendering Archakathvam and the department insisted his father to surrender the land and made an assurance that the family members will be appointed as Archakas of the temple and on that agreement, the father surrendered the land and two of his brothers were appointed as Archakas. He further contends

that the appellant has given his no objection for appointment of his brothers on condition that whenever other vacancy arises he shall be appointed as Archaka. He further contends that the family of the appellant is doing service since times immemorial and on the above understanding only, the family surrendered the entire land to the department and in view of the same, Rule 7 of the G.O.Ms.No.261 is not at all applicable to the appellant as the rights accrued on him are hereditary and his appointment cannot be treated as direct appointment.

It is not in dispute that two elder brothers of the appellant were appointed as Archakas, and by the impugned proceedings dated 25.2.2005, the appellant herein, who is also none other than the brother of the 1st respondent herein, was allowed to do Archakatvam on a nominal remuneration of Rs.600/- per month. The appellant has already taken charge of Archaka and he is working as such. Questioning the appointment of the appellant, the writ petition was filed on the ground that the appellant is barred by age. The learned Single Judge allowed the writ petition as stated above.

As can be seen from the record, it is apparent that no material was placed before this Court by either of the parties that a notification has been issued for filling up of Archaka posts by the respondent-temple. In the absence of such notification, the writ petitioner-1st respondent herein has no right whatsoever to claim the post of Archaka. As a matter of fact, the respondent-temple has allowed the appellant herein to continue as Archaka on a nominal remuneration of Rs.600/- per month. In this regard, the learned Counsel for the 1st respondent has contended that as the post sanctioned to the family of the 1st respondent and the appellant, is a third post, the 1st respondent would have been considered instead of his brother-appellant or the said post should be filled up by direct recruitment. We see no force in the contention of the learned counsel for the 1st respondent-writ petitioner since the appellant herein is not working on a regular basis or regular pay scale. The nominal appointment of the appellant cannot be construed as a regular appointment and nobody can compete for such appointment, in the absence of any notification.

Under the above circumstances, we see no grounds to interfere with the order under appeal. However, in the peculiar facts and circumstances of the case, we modify the order of the learned Single Judge to the extent that the appellant herein shall be continued on the nominal remuneration of Rs.600/- per month as stated in

the proceedings impugned in the writ petition, till the third post is filled up, in accordance with the rules.

With the above modification, the writ appeal is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice P. Laxmana Reddy

Date: 24th June, 2005

Nn.

Copy to:

1. The Executive Officer, Sri Kasi Viswaswara Swamy Temple, Ongole.
2 The Regional Joint Commissioner, Muti-zone-II, Endowment

Department, O/o.Hathiramji Hutt,
Tirupathi, Chittoor District.

3. Two C.D copies.